

**BEFORE THE  
COMMISSION ON LANDLORD TENANT AFFAIRS  
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Alaa Kamel

Complainant

V.

Kathleen Moran

Respondent

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Case No. 31807

Rental Facility: 19416 Dubarry Drive, Brookeville, Maryland 20833 (License Number 52572)

**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 18<sup>th</sup> day of May, 2011, found, determined, and ordered, as follows:

**BACKGROUND**

On July 15, 2010, Alaa Kamel, ("Complainant"), former tenant at 19416 Dubarry Drive, Brookeville, Maryland ("Property"), a licensed single-family rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), in which he alleged that his former landlord, Kathleen Moran, owner of the Property ("Respondent"): (1) assessed unjust charges against his security deposit (\$2,100.00) plus accrued interest (\$250.00), in the amount of \$6,317.33, after the termination of his tenancy, in violation of Section 8-203(f)(1) of the Real Property Article, Annotated Code of Maryland, 1954, 2003 Repl. Vol., 2007 Suppl. ("Real Property Article"); (2) failed to refund any portion of his security deposit plus accrued interest within 45 days after the termination of his tenancy, in violation of Section 8-203 (e)(1) of the Real Property Article; and (3) charged him for improvements made to the Property in preparation for its sale.

The Complainant alleges that he did not cause damage to the Property in excess of ordinary wear and tear. He further alleges that the Respondent performed work on the Property not to repair damages in excess of ordinary wear and tear but to prepare the Property to be put on the market for sale. The Complainant denies damaging the carpets, hardwood floors, or causing

the water damage in the garage or in the basement of the Property. He also alleges there were pre-existing mold problems in the garage and upstairs bathroom when he moved into the Property.

In response to the Complainant's allegations, the Respondent alleges that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during his tenancy; (2) the Complainant's failure to promptly report water damage in the garage and basement during his tenancy caused severe damage to the Property for which she incurred actual costs to repair; (3) the Complainant had Verizon and Dish Network install satellites on the Property without prior written permission, causing damage to the roof and gutters for which she incurred actual costs to repair; (4) the damages to the Property far exceed the security deposit; and, (5) the estimates were received and repairs completed and paid for within 45 days after the Complainant vacated the Property.

The Complainant is seeking an Order from the Commission for the Respondent to refund his entire \$2,100.00 security deposit plus accrued interest in the amount of \$220.50, for a total award of \$2,320.50.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Alaa Kamel, the Respondent, Kathleen Moran, one witness for the Complainant, Husni Kuraishi, two witnesses for the Respondent, James Moran, the Respondent's husband, and Dusty Gloeckler, Contractor for the Respondent. Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence, without objection, two exhibits offered by the Complainant: (1) an undated photograph of a room in the basement of the Property, identified as Complainant's Exhibit No. 1; and, (2) an undated photograph of the front of the Property, identified as Complainant's Exhibit No. 2. The Commission also entered into evidence, with objection from the Complainant, a copy of a final walk through inspection dated May 5, 2010, performed by the Respondent's husband, James Moran, identified as Respondent's Exhibit No. 1.

### **FINDINGS OF FACT**

Based on the evidence of record, the Commission makes the following Findings of Fact:

1. On May 4, 2006, the Complainant signed a lease agreement ("Lease") with the Respondent for the rental of the Property, which commenced on July 1, 2006, and expired on June 30, 2007, at a monthly rent of \$2,100.00. In addition, the Complainant paid rent to the Respondent in the amount of \$1,960.00 for the period June 3, 2006 through June 30, 2006, which encompasses the time period prior to the commencement of the one-year lease agreement on July 1, 2006.

2. At the commencement of his tenancy, the Complainant paid the Respondent a security deposit in the amount of \$2,100.00, which amount is properly receipted in the Lease.

3. The Complainant remained in the Property on a month to month basis, after the expiration of the initial lease.

4. By a letter dated April 1, 2010, the Complainant issued the Respondent a notice of his intention to vacate the Property, effective April 30, 2010.

5. The Complainant vacated the Property and returned the keys to the Respondent on May 4, 2010, having paid rent in full through April 30, 2010, which the Respondent accepted as the termination of his tenancy.

6. The Complainant and the Respondent's husband, James Moran performed a final walk-through inspection of the Property on May 5, 2010.

7. On June 3, 2010, within 45 days after the termination of the Complainant's tenancy, the Respondent sent the Complainant, by certified mail, an itemized list of damages being assessed against his security deposit as follows:

Security deposit posted on May 4, 2006	\$2,100.00
<b>Item</b>	<b>Actual Cost</b>
1. Carpeting in living room, dining room, stairs and hallway was stained beyond recognition. This carpet was brand new when you moved in	\$1,466.23
2. Basement carpeting was also stained as well as water soaked and mildewed. Upon vacating the property, you attempted to clean the carpet, but it was ruined beyond repair.	\$1,410.67
3. Failure to keep gutters and downspouts clear and installation of cables without permission resulted in water penetration into the basement damaging the drywall and baseboards.	\$1,735.00
4. Failure to keep gutters and downspouts clear resulted in overflow of water into garage causing termite infestation and termite damage to garage.	\$ 800.00
5. Broken window and frame in dining room	\$ 250.00
6. Medicine cabinet/mirror in hall bathroom completely destroyed	\$ 150.00
7. Top of stove ruined	\$ 150.00
8. Hall bedroom wallpaper destroyed by writing with magic marker and punching holes in wallpaper necessitating removal of wallpaper and repainting the room.	\$ 395.00

There are also other costs incurred due to the neglect of the exterior of the property and extensive painting cost beyond normal wear and tear for which I am not charging you. You made no attempt to address any issues other than the carpeting, resulting in the landlord paying to have these repairs made.....The total amount due to cover damages is \$6,356.90. Upon receipt of your compensation to cover these damages, we will return your security deposit and the interest.

8. The Complainant signed for the above-noted certified mail on June 7, 2010, within forty-five days after the termination of his tenancy.

9. The Commission finds that the Respondent did not credit the Complainant's security deposit with any accrued interest.

10. The Commission finds that the Respondent did not replace the carpeting in the living room, dining room, hallway, stairs and the master bedroom but had the hardwood floors in these areas refinished.

11. The Commission finds credible the Respondent's testimony that the carpeting in the basement was badly soaked with water from a disconnected gutter extension which was the result of cable installation at the beginning of the Complainant's tenancy and that the carpeting had to be replaced. The Commission finds credible the Respondent's testimony that she had the carpeting in the Property replaced prior to the commencement of the Complainant's tenancy and the carpeting was four years old at the end of the tenancy.

12. The Commission does not find credible the Complainant's testimony that the basement walls had prior damage which caused the water infiltration and caused the mold on the basement walls after he vacated the Property.

13. The Commission finds that the Complainant did not request or receive written permission from the Respondent to install a dish antenna as required by the Lease. The Commission also finds that the actions taken by the Complainant's contractor for cable services, Dish Network, caused water damage to the drywall and baseboards in the basement of the Property as a result of the installation of cable wires; that this condition did not exist before the Complainant moved into the Property; and, that this condition constitutes damage in excess of ordinary wear and tear. This finding is supported by the credible testimony of Respondent's witnesses, Mr. James Moran and Mr. Dusty Gloeckler, and the photographic evidence submitted by Respondent.

14. The Commission does not find credible the Complainant's testimony that the window in the dining room was working fine and that the Respondent's contractors damaged the window.

15. The Commission finds credible the testimony of the Respondent that she had to hire a contractor to replace the window frame that was torn away from the window at the termination of the Complainant's tenancy.

16. The Commission finds credible the Respondent's testimony that the damage to the medicine cabinet occurred during the Complainant's tenancy and that she incurred a cost of \$149.00 to purchase the cabinet and an additional \$120.00 to install it.

17. The Commission finds that the stove top in the Property was new at the commencement of the Complainant's tenancy. The Commission further finds that the

Complainant damaged the stove top in excess of ordinary wear and tear and the Respondent incurred actual costs in the amount of \$133.37 to replace the stove top.

18. The Commission finds that the Complainant damaged the wallpaper in the master bedroom with black and blue magic marker and damaged the walls by punching holes through the wallpaper, which was in excess of ordinary wear and tear.

### **CONCLUSIONS OF LAW**

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Section 8-203(g)(1) and (2) of the Real Property Article states: "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f) (1) of this section together with a statement of the cost actually incurred, and "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Respondent did send such a list to the Complainant within 45 days after his tenancy, by certified mail and is therefore in compliance with Section 8-203(g) (1) of the Real Property Article.

2. Pursuant to § 8-203(f)(1)(i) of the State Code, the Respondent was within her rights to withhold from the Complainant's security deposit the cost actually incurred to repair damages to the Property in excess of normal wear and tear after the termination of the Complainant's tenancy, which amount was \$2,755.52, as follows:

- (1) \$329.14 to replace basement carpeting which amount is based on an average carpet life of five years, calculated as follows:  $\$1,410.67 \text{ (cost of new carpet)} / 60 \text{ months} = 23.51 \text{ (monthly cost)} \times 14 \text{ (remaining life of carpet in months)} = \$329.14$ ;
- (2) \$1,735.00 to correct water damage caused by improper installation of cable by the Complainant's contractor, Dish Network;
- (3) \$80.00 to replace a damaged window frame in the dining room;
- (4) \$120.00 of labor costs to replace a damaged bathroom medicine cabinet. The average life of a medicine cabinet is 16 years and there is no evidence that it was new when the Complainant moved in. The cost of replacement materials is disallowed but the labor cost of \$120.00 is justified;
- (5) \$96.38 pro-rata cost for replacing the damaged stove top based on the average life of a stove (14 years) calculated as follows:  $\$133.37 / 168 \text{ (14 yrs x 12 mo)} = .79 \times 122 \text{ (remaining useful life)} = \$96.38$ ; and
- (6) \$395.00 to remove damaged wallpaper, repair the damaged walls and repaint the hall bedroom.

3. The Commission concludes that the Complainant did damage the carpeting in the living room, dining room and bedrooms in excess of ordinary wear and tear; however, since the Complainant chose to replace the carpeting with hardwood floors, the Complainant could not be charged and the \$1,735.00 charge for the floors is disallowed.

4. Section 8-203(e) (1) and (2) of the Real Property Article states: “(1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld. (2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.” The Commission concludes that the Respondent failed to credit the Complainant’s security deposit with simple interest as required by the Real Property Article. The correct amount of simple interest is calculated as follows:  $\$2,100.00 \times 10.5\% = \$220.50$  (tenancy was 46 months)

5. The Commission concludes that the Complainant did damage the Property in excess of ordinary wear and tear and the Respondent did incur actual costs in the amount of \$2,755.52, which exceeded the Complainant’s security deposit (\$2,100.00) plus accrued interest (\$220.50). Therefore, the Complainant has caused a defective tenancy and the Respondent is entitled to retain the entire security deposit plus accrued interest.

### **ORDER**

In view of the foregoing, the Commission concludes that the Respondent properly assessed \$2,769.52 against the Complainant for damages to the Property in excess of ordinary wear and tear and that the Respondent was within her rights to retain the Complainant’s entire security deposit plus accrued interest in the amount of \$2,320.50. Therefore Case No. 31807, Alaa Kamel v. Kathleen Moran is hereby DISMISSED.

Commissioner Galia Steinbach, Commissioner Beverly Flanagan, and Commissioner Denise Hawkins, Panel Chairperson, concurred in the foregoing decision unanimously.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals.

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Denise F. Hawkins, Panel Chairperson  
Commission on Landlord-Tenant Affairs